STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: December 21, 2022)

MICHAEL R. McELROY and	:	
CHRISTINE O. McELROY,	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. WC-2014-0575**
	:	
EDWARD STEPHENS, III, Alias John Doe,	:	
MARILYN O. STEPHENS, Alias Jane Doe,	:	
PAUL G. ANTHONY, Alias John Doe,	:	
NANCY L. ANTHONY, Alias Jane Doe, and	:	
VIVIAN H. LACROIX, Alias Jane Doe,	:	
***Defendants*.**	:	

DECISION

TAFT-CARTER, J. This matter is before this Court following an order of remand to the Superior Court from the Rhode Island Supreme Court. The Supreme Court remanded this case for trial with instruction to this Court to determine "whether an implied easement or easement by necessity exists allowing the McElroys to cross over the Stephens [P]roperty or any of the other defendants' properties." *McElroy v. Stephens*, 226 A.3d 1288, 1292 (R.I. 2020). This matter proceeded to trial without a jury on May 12 and May 13, 2021, and June 4, 2021. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13, 9-30-1, and 34-16-4 and Rule 52 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

Plaintiffs Michael R. and Christine G. McElroy (Plaintiffs) are the owners of real property at 79 Stanton Avenue in Narragansett (the Property). (Am. Compl. ¶ 1.) The Property is separated from Seaweed Beach by three lots, all of which abut Seaweed Beach. The lots are owned by

Defendants, Marilyn O. Stephens and Edward Stephens, III; Defendants Paul G. and Nancy L. Anthony; and Defendant Vivian H. Lacroix. (Am. Compl. ¶¶ 2-4.) The crux of this dispute concerns whether Plaintiffs have an easement[1] permitting them to cross over Defendants' properties to reach Seaweed Beach. (*See generally* Am. Compl.)

On October 7, 2014, Plaintiffs filed their Complaint against Marilyn O. Stephens and Edward Stephens, III (the Stephenses), seeking to quiet title, declaratory judgment, and injunctive relief. (Compl.) Plaintiffs subsequently amended their Complaint in October of 2015, adding Paul G. and Nancy L. Anthony (the Anthonys) and Vivian H. Lacroix (Lacroix) as Defendants (with the Stephenses, collectively Defendants). (Am. Compl.) Plaintiffs asserted that they retained an express easement to cross over the Stephens Property as well as the respective properties of the other Defendants, according to the chain of title and G.L. 1956 § 34-11-28. (Am. Compl. ¶¶ 33-35.) Plaintiffs also maintained that they had previously been able to exercise "their deeded rights as holders of the Easement aforesaid to access the sea over the Stephenses' Property," and that the Dareliuses had orally confirmed Plaintiffs' deeded rights to cross over what is now the Stephens Property to reach Seaweed Beach. (Am. Compl. ¶¶ 33-35, 38-39.)

In Count I of the Amended Complaint, Plaintiffs asserted that they were entitled to judgment quieting title to their easement pursuant to chapter 16 of title 34. (Am. Compl. ¶ 45.) In Count II of the Amended Complaint, Plaintiffs asserted that they were entitled to declaratory judgment establishing that they are the "true, lawful and proper owners and users of the [e]asement in and over the Stephenses' Property, the Anthonys' Property and/or the Lacroix Property, or a combination thereof," and that Plaintiffs have a right to use the purported easement pursuant to chapter 30 of title 9, and Rule 57 of the Superior Court Rules of Civil Procedure. (Am. Compl.

[1] The extensive history to the properties involved in the instant action is described below.

¶ 47.) Finally, in Count III of the Amended Complaint, Plaintiffs sought injunctive relief enjoining Defendants from interfering with Plaintiffs' use of the purported easement to cross Defendants' respective properties and asserting that Plaintiffs have no adequate remedy at law. *Id.* ¶¶ 49, 50.

In response, Defendants each filed counterclaims along with their answers to the Amended Complaint. Defendants each asserted the following counterclaims as to their respective properties: (1) quiet title; (2) declaratory judgment (seeking declarations that Plaintiffs do not have an easement burdening their respective properties); and (3) injunctive relief enjoining Plaintiffs from crossing their respective properties. (*See* Stephenses' Answer to Am. Compl., Countercl. attached thereto, ¶¶ 155-163; Lacroix's Answer to Am. Compl., Countercl. attached thereto, ¶¶ 69-77; Anthonys' Answer to Am. Compl., Countercl. attached thereto, ¶¶ 157-165.)

On August 22, 2016, a hearing was held on the parties' cross-motions for summary judgment. The hearing justice issued a bench decision granting the Plaintiffs' Motion for Summary Judgment and denying the Defendants' Motion for Summary Judgment on August 27, 2018.

On October 17, 2018, judgment entered in favor of the Plaintiffs' motion for summary judgment. *McElroy*, 226 A.3d at 1291; *see also* Judgment, Oct. 17, 2018 (Matos, J.). Defendants timely appealed to the Rhode Island Supreme Court. *See* Notice of Appeal, November 2, 2018.

The Rhode Island Supreme Court vacated the judgment and remanded the case to this Court, holding that "genuine issues of material fact remain" as to whether Plaintiffs have an implied easement or an easement by necessity to cross over Defendants' properties, and as to how such an easement[2] was created. *McElroy*, 226 A.3d at 1291-92.

[2] The Rhode Island Supreme Court did not address the hearing justice's conclusion that an express easement existed for Plaintiffs to cross over the Stephenses' Property to reach Seaweed Beach. *McElroy v. Stephens*, 226 A.3d 1288, 1291-92 (R.I. 2020).

The Supreme Court noted that, "The [P]laintiffs may have a right to traverse the Stephens [P]roperty or any of the other [D]efendants' properties to make use of their right to use the beach. The hearing justice did not make any findings or legal conclusions with respect to whether an implied easement or easement by necessity exists allowing the McElroys to cross over the Stephens [P]roperty or any of the other [D]efendants' properties. Such claims must be examined by the finder of fact in the first instance. *In order to make this determination, the facts and circumstances at the time of the subdivision of the Davis Heritage, as well as at the time of the 1986 deed to the McElroy [P]roperty, must be considered*." *Id*. at 1292 (emphasis added).

This action proceeded to trial without a jury on May 12 and 13, and June 4, 2021. *See* Trial Tr., May 12, 2021 (May 12 Tr.); Trial Tr., May 13, 2021 (May 13 Tr.); Trial Tr., June 4, 2021 (June 4 Tr.). At trial, Plaintiffs presented the following witnesses: Ronald C. Markoff, Michael McElroy, and Christine McElroy. *See* Tr. Index. After conclusion of Plaintiffs' case-in-chief, Defendants presented the following witnesses: Matthew Lacroix, Paul Anthony, and Marilyn Stephens. *See* Tr. Index. In lieu of closing arguments, the parties submitted post-trial memoranda to this Court. *See* Docket WC-2014-0575; *see also* Plaintiffs' Post Tr. Br. and Defs' Post Tr. Mem.

Having reviewed the evidence and exhibits, this Court makes the following findings of fact.

A

History of Real Estate Conveyances Relevant to the Instant Dispute

Resolution of this dispute requires an examination of the relevant real estate conveyances from 1925 to the present. Here, the parties do not dispute the conveyances; rather, they dispute

the legal effect of the conveyances on Plaintiffs' claim of an easement to cross the properties of the Stephenses and other Defendants to reach Seaweed Beach.

1

Early Real Estate Conveyances Involving Carrie M. Davis

On October 7, 1925, Carrie M. Davis (Davis) acquired title in fee simple by quitclaim deed to an existing lot (Lot 1) in the Town of Narragansett, with fifty feet of northerly frontage on Stanton Avenue, from Susan E. Knowles, (Knowles) Sarah B. Champlin, (Champlin) and Hattie S. Tucker (Tucker). (Joint Statement ¶ 1; Joint Ex. 1-A.) The quitclaim deed included an easement to use the street abutting Stanton Avenue, as well as a restriction that no intoxicating liquors or drugs were to be sold or kept on the property. Lot 1 abutted Seaweed Beach, which was owned by Knowles, Champlin, Tucker, and John R. Champlin, to the south. (Joint Statement ¶ 4; Joint Exs. 3-C, 4-D.)

Davis acquired title in fee simple by quitclaim deed to a second lot (Lot 2) contiguous to the first, from Knowles, Champlin, and Tucker on August 10, 1926. (Joint Statement ¶ 2; May 12 Tr. 7:17-22; Joint Ex. 2-B.) Lot 2 had 100 feet of northerly frontage on Stanton Avenue, abutting Lot 1 on its easterly property line, and another lot to the southwest, but Lot 2 did not abut Seaweed Beach.[3]

On January 17, 1929, Knowles, John and Sarah Champlin, and Tucker granted Davis an easement, by deed, upon Seaweed Beach to reach the ocean. (Joint Statement ¶ 4; Joint Ex. 4-D.) The easement deed was recorded on February 2, 1929 in Book 10 at Page 10 of Narragansett's

[3] In its opinion remanding this matter to this Court, our Supreme Court referred to Lots 1 and 2 as the "Davis Heritage[,]" *McElroy v. Stephens*, 226 A.3d 1288, 1289 (R.I. 2020), and therefore this Court will refer to Lots 1 and 2 as the Davis Heritage. Although Lot 1 of the Davis Heritage abutted Seaweed Beach to the south, (Joint Statement ¶ 4; Joint Exs. 3-C, 4-D), Lot 2 of the Davis Heritage did not abut Seaweed Beach. (Joint Ex. 2-B, 3-C.)

Land Evidence Records. (Joint Statement ¶ 4; Joint Ex. 4-D.) The express easement benefitted the Davis Heritage—Lots 1 and 2—as the dominant estate and burdened the Knowles-Champlin-Champlin-Tucker beach property (Seaweed Beach) as the servient estate. (Joint Statement ¶ 4; Joint Ex. 4-D.)

The 1929 easement deed contained broad language granting to Davis and her successors in the two contiguous lots of the Davis Heritage, the

> "benefit and advantage, from time to time, and at all times, forever hereafter, at her and their respective will and pleasure, and for all purposes connected with the lawful use of Grantee's said lands, to pass and repass with horses, carts, wagons, and other carriages and vehicles, laden and unladen, and on foot, and also to drive cattle and other beasts, through and [over] the entire length and width of [Seaweed Beach]." (Joint Ex. 4-D.)

On September 20, 1937, Davis conveyed Lots 1 and 2 by mortgage deed to the Wakefield Trust Company to secure the payment of a $5,000 loan. (Defs.' Ex. B.) The following month, on October 30, 1937, Davis conveyed Lots 1 and 2 to her daughter Martha Davis (Martha) in fee simple, reserving a life estate to herself, by quitclaim deed, recorded in Book 14 at Page 328 of Narragansett's Land Evidence Records. (Joint Statement ¶ 5; Joint Ex. 5-E.)

2

The Subdivision of the Davis Heritage[4]

a

The Stephens Property

The subdivision of the Davis Heritage (Lots 1 and 2) began on March 3, 1944, when Carrie Davis and her daughter Martha conveyed the portion[5] of their property that is currently known as the "Stephens Property" to Walter and Grace Potter by quitclaim deed recorded on March 6, 1944 in Book 20 at Page 25 of Narragansett's Land Evidence Records. (Joint Statement ¶ 7; Joint Ex. 7-G.) On March 4, 1944, the Wakefield Trust Company, as mortgagor, conveyed the same property to Walter and Grace Potter. (Defs.' Ex. D.)

The Carrie M. Davis and Martha Davis deed to the Potters contained the following language referencing the easement upon Seaweed Beach:

> "Conveyance of the premises herein first described, [the Potter Lot] and hereby conveyed, is made subject to all covenants and agreements, on the part of said Carrie M. Davis, her heirs and assigns, to be kept and performed, and all conditions and provisos, contained in said first mentioned deed. And the grant herein contained with respect to the premises herein last described is made

[4] This account of the subdivision of the Davis Heritage proceeds in chronological order, beginning with the earliest conveyances and moving through subsequent conveyances, but it should be noted that the current owners of the various properties resulting from the subdivision of the Davis Heritage acquired their respective properties in the following order: The Lacroixes acquired the Lacroix Property in 1979, the McElroys acquired the McElroy Property in 1986, the Anthonys acquired the Anthony Property in 2000, and the Stephenses acquired the Stephens Property in 2010. All of Defendants' properties abut Seaweed Beach to the south, and they run east to west in the following order: the Stephens Property, the Anthony Property, and the Lacroix Property. *See McElroy*, 226 A.3d at 1292-93 (Appendix A, showing Town of Narragansett Tax Assessors Plat). Of all the properties implicated in the instant litigation, the McElroy Property is the sole parcel that no longer abuts Seaweed Beach.

[5] This parcel is described as Lot 182 on the Assessor's Plat N, and is currently known as the Stephens Property, in view of the Stephenses' 2010 acquisition of the property from the Dareliuses. (Joint Ex. 34-HH.)

> subject to all covenants and agreements, on the part of said Carrie M. Davis, her heirs and assigns, to be kept and performed, and all conditions and provisos, contained in said last mentioned deed." (Joint Ex. 7-G.)

The effect of this language with respect to the easement upon Seaweed Beach benefitting what is now the Stephens Property is that it was conveyed by operation of law once the lot was subdivided and it confirmed the easement in express terms.

On April 19, 1958, Walter and Grace Potter conveyed this parcel to Conrad and Gail Darelius (the Dareliuses) by warranty deed (the 1958 Darelius deed), recorded on May 2, 1958 in Book 44 at Page 128. (Joint Statement ¶ 11; Joint Ex. 11-K.). Walter Potter later executed a second warranty deed, on December 2, 1965 (the 1965 Darelius deed), conveying the same parcel to the Dareliuses, recorded in Book 58 at Pages 180-81. (Joint Statement ¶ 17; Joint Ex. 17-Q.) The 1965 Darelius deed explicitly conditioned the conveyance of the parcel "subject to all covenants and agreements, on the part of said Carrie M. Davis, her heirs and assigns, to be kept and performed[.]" (Joint Ex. 17-Q.)

The Dareliuses then transferred this parcel to the Gail E. Darelius Revocable Trust-2001 by quitclaim deed on January 19, 2001. (Joint Statement ¶ 26; Joint Ex. 28-BB.) The Trust subsequently conveyed the parcel to Defendants Marilyn O. Stephens and Edward Stephens, III (the Stephenses) as tenants by the entirety by trustee's deed recorded on November 1, 2010 in Book 760 at Page 649, and confirmatory deed recorded on November 30, 2010 in Book 763 at Page 37. (Joint Statement ¶¶ 26, 28; Joint Exs. 30-DD, 31-EE.)

b

The Lacroix Property

On June 1, 1944, Davis and her daughter Martha conveyed the portion[6] of their property that is currently known as the "Lacroix Property" in fee simple to Lawrence and Irene Wells, by quitclaim deed recorded on July 31, 1944 in Book 20 at Page 257 in Narragansett's Land Evidence Records. (Joint Statement ¶ 8; Joint Ex. 8-H.) The same parcel was conveyed in fee simple to Leslie and Bertha Ward on May 25, 1949, by warranty deed recorded in Book 29 at Page 32. (Joint Statement ¶ 9; Joint Ex. 9-I.) On November 4, 1963, Bertha Ward conveyed the parcel to Robert and Muriel West in fee simple by warranty deed recorded on December 2, 1963 in Book 53 at Page 477. (Joint Statement ¶ 16; Joint Ex. 16-P.) On October 2, 1979, Muriel West conveyed the Lacroix Property to Matthew and Vivian Lacroix in fee simple by warranty deed recorded on October 3, 1979 in Book 117 at Page 573. (Joint Statement ¶ 19; Joint Ex. 20-T.) Finally, on March 10, 1993, Matthew and Vivian Lacroix granted the property exclusively to Vivian, the current owner, by quitclaim deed recorded March 12, 1993 in Book 291 at Page 216. (Joint Statement ¶ 23; Joint Ex. 24-X.)

c

The McElroy Property

On April 5, 1960, the final relevant portion[7] of the Davis Heritage was conveyed, and that portion of the property is currently known as the "McElroy Property." (Joint Ex. 12-L.) The lot

[6] This parcel is described as Lot 183 on the Assessor's Plat N, and is currently known as the Lacroix Property, in view of the Lacroixes' 1979 acquisition of the property from Muriel West. (Joint Ex. 34-HH.)

[7] This parcel is described as Lot 113 on the Town of Narragansett Tax Assessor's Plat N, and is currently known as the McElroy Property, in view of the McElroys' 1986 acquisition of the property from the Dareliuses. (Joint Ex. 34-HH.)

was created through a severance of the property described in the 1925 deed as well as a portion of the property that had been acquired by Davis in 1926. The conveyance from Davis was to Everett and Clara Babcock by warranty deed, recorded on May 18, 1960 in Book 47 at Page 355 of Narragansett's Land Evidence Records. (Joint Statement ¶ 12; Joint Ex. 12-L.) The warranty deed retained a "right to lay, operate, maintain and repair underground water lines" as well as a "right to pass and repass over and along a strip of land five (5) feet in width by its entire depth bounded . . . northerly by land of the grantees." (Joint Ex. 12-L; May 12 Tr. 20:23-21:5.)

On November 15, 1983, the Babcocks conveyed this parcel to Conrad and Gail Darelius (the Dareliuses) by warranty deed. (Joint Ex. 21-U.)

Importantly, the November 1983 conveyance resulted in the Dareliuses' ownership of two abutting parcels stemming from the Davis Heritage: the Stephens Property and the McElroy Property. (Joint Exs. 11-K, 21-U.)

On March 5, 1986, Plaintiffs entered into a purchase and sale agreement with the Dareliuses for the purchase and sale of the McElroy Property. The purchase and sale agreement contained a provision that the transaction would convey the property itself, "[t]ogether with the rights, set forth in the deeds, to cross the lands of Mr. and Mrs. Darelius to have access to the water." *McElroy*, 226 A.3d at 1289. This agreement was recorded in the Narragansett Land Evidence Records. *Id.*

The Dareliuses conveyed the McElroy Property to Plaintiffs as tenants by the entirety on April 30, 1986 by warranty deed (the 1986 McElroy deed). The deed was recorded on May 1, 1986 in Book 186 at Page 174 of Narragansett's Land Evidence Records. (Joint Statement ¶ 21; May 12 Tr. 21:14-22; Joint Ex. 22-V.) The 1986 McElroy deed "did not explicitly contain the same specific language as the purchase and sale agreement, but it did include the following significant

language: 'Together with and subject to all easements, rights of way and restrictions of record[,]'" *McElroy*, 226 A.3d at 1289, and cited to "'Book 8, page 528, Book 8, page 594, Book 10, page 10, Book 15, page 666 and Book 47, page 355.'" *Id*.; *see also* Joint Ex. 22-V; May 12 Tr. 26:20-27:2. The 1986 McElroy deed's citation to Book 10, page 10 of the Narragansett Land Evidence Records refers to the original 1929 express easement granted to Davis upon Seaweed Beach to reach the ocean. *See* Joint Ex. 22-V; May 12 Tr. 26:20-27:2.

As the Plaintiffs' access to Seaweed Beach is available only by crossing over one or more of Defendants' properties, the central issue for determination by this Court concerns the Plaintiffs' legal right to access Seaweed Beach and the sea.

d

The Anthony Property

On May 15, 1992, Martha (née Davis), daughter of Davis, along with John Taylor, Carol Cellars, and William and Fred Trafton, conveyed certain property,[8] now known as the "Anthony Property," to Gail Darelius in fee simple by quitclaim deed recorded on May 18, 1992 in Book 275 at Page 593 of Narragansett's Land Evidence Records. (Joint Statement ¶ 22; Joint Ex. 23-W.) On November 16, 2000, Gail Darelius conveyed what is now known as the Anthony Property to Paul and Nancy Anthony, the current owners, by warranty deed recorded on November 17, 2000 in Book 434 at Page 625. (Joint Statement ¶ 25; Joint Ex. 27-AA.) The Anthony Property runs between the Stephens Property to the west and the Lacroix Property to the east and abuts Seaweed Beach to the south.

[8] This parcel is described as Lot 113 on the Assessor's Plat N, and is currently known as the Anthony Property, in view of the Anthonys' 2000 acquisition of the property from the Dareliuses. (Joint Ex. 34-HH.)

B

Summary of Trial Testimony

1

Ronald Markoff, Esq.

Ronald Markoff, a distinguished member of the Rhode Island Bar, testified on behalf of Plaintiffs as an expert in Rhode Island real estate titles. (May 12 Tr. 5:18-23.) Mr. Markoff testified with respect to the four chains of title that derived from the property that was owned by Davis. (May 12 Tr. 5:6-7.) He also testified, without objection, to his opinions regarding the ultimate issues in this case. The Court finds credible his testimony regarding the chain of title; however, his conclusions are deemed irrelevant as they related to the core issues in this trial.

2

Michael McElroy

Plaintiff Michael McElroy testified that he and his wife reside in the Town of Smithfield, Rhode Island. (May 13 Tr. 155:13-14.) In 1986, Mr. McElroy and his wife purchased the McElroy Property in Narragansett for use as a summer residence. (Joint Ex. 22-V; May 13 Tr. 155:15-156:23.) Mr. McElroy described that his desire to purchase property in the Sand Hill Cove area of Narragansett arose from fond memories of his young adulthood and the beginning of his relationship with his wife, who was his childhood sweetheart. (May 13 Tr. 156:24-157:20.)

Mr. McElroy credibly testified that his desire to own beach property prompted him to comb the vacation property classified ads in the Sunday newspaper each week, until one Sunday in 1986, when he came across an advertisement for property located steps from the beach in the Sand Hill Cove neighborhood in Narragansett, Rhode Island. *Id.* at 158:11-159:2. On that day, the McElroys left their home in Smithfield and headed south to the beach to meet the Dareliuses at their property, which at that time encompassed both the McElroy Property and the Stephens Property. *Id.* at 159:3-

15. After viewing the property that was for sale, the McElroys offered the full price of $94,000. *Id.* at 160:5-19. The Dareliuses accepted the McElroys' offer. *Id.* at 160:24-161:7. Mr. McElroy testified that he and his wife conditioned their purchase of the McElroy Property on access to Seaweed Beach. *Id.* at 161:8-11. According to Mr. McElroy, as a result, the 1929 easement deed that granted to Davis, who owned the entire Davis Heritage in 1929, the easement upon Seaweed Beach to reach the ocean was intentionally referenced in the 1986 McElroy deed and permission to cross over the Dareliuses' driveway to reach Seaweed Beach was granted. *Id.* at 162:3-10; 168:2-9; *see also* Joint Exs. 4-D, 22-V.

Mr. McElroy also credibly testified that the Dareliuses designated their driveway—on what is now the Stephens Property—as the right-of-way that Plaintiffs could cross to reach Seaweed Beach and gave Plaintiffs permission to cross over their driveway. (May 13 Tr. 168:24-169:1; Pls.' Ex. 4.) Over the years, from the time Plaintiffs purchased the McElroy Property in 1986 to the incident in 2013 in which Defendant Marilyn O. Stephens disputed whether Plaintiffs had the legal right to cross over the Stephens Property, Plaintiffs crossed over this designated right-of-way on the Stephens Property to reach Seaweed Beach. (May 13 Tr. 170:1-11.) The McElroys physically reached the Dareliuses'—and later the Stephenses'—driveway through a gate, and later an opening in the fence that led to a dirt roadway. *Id.* at 173-:17-174:5, 206:11-18. This roadway has frontage on Stanton Avenue, runs along the western border of the McElroy Property, and is used by all Defendants to access their properties from Stanton Avenue. *Id.* at 213:7-13. This roadway is owned by the Anthonys. *Id.* at 213:13-15. The McElroys would briefly enter the Anthonys' roadway before crossing over onto the Dareliuses' driveway—now the Stephenses' driveway. (May. 13 Tr. 206:5-18; Pl.'s Ex. 2.)

Shortly after purchasing their property in 1986, the McElroys built a gate facing the Stephens Property to permit them to cross the Stephens Property to reach Seaweed Beach. (May 13 Tr. 173:19-174:5.) This fence was in existence for ten to fifteen years until a new fence was built that had no gate but simply had an opening in the fence. *Id.* at 221:11-24. Mr. McElroy testified that he and his family crossed over the Anthony roadway and the Stephens Property driveway to reach Seaweed Beach continuously for twenty-seven years until 2013 when the Stephenses precluded Christine McElroy from crossing the Stephens Property and thus prevented her from accessing Seaweed Beach. *Id.* at 178:25-180:3; 217:20-24. Mr. McElroy provided the Court with various credible photographs of the McElroy family on Seaweed Beach, as well as using the driveway on the Stephens Property to cross the Stephens Property and thereby to reach Seaweed Beach. (Pls.' Exs. 3, 4, 16.)

3

Christine McElroy

Plaintiff Christine McElroy also testified at trial. She was a credible witness. She testified concerning a conversation that she had with the Stephenses in June 2013 about crossing the Stephens Property to access Seaweed Beach. (May 13 Tr. 264:18-266:13.) During the conversation, the Stephenses indicated that the McElroys had no right to cross the Stephens Property to access Seaweed Beach. Immediately after the conversation between the Stephenses and Christine McElroy, the Stephenses erected a chain across their driveway, thereby preventing the McElroys from crossing the Stephens Property to gain access to Seaweed Beach. (May 13 Tr. 265:10-12, 265:24-266:13.)

4

Defendants-Neighbors

Defendant Matthew Lacroix also testified at trial. He testified that he purchased his property with his wife Vivian in 1979. (June 4 Tr. 280:13-16.) The Lacroixes resided full-time in Bellingham, Massachusetts from 1979 to 2011, using the Lacroix Property for at most four weeks out of the year. *Id.* at 280:2-16; 299:1-7. Beginning in 2011, the Lacroixes divided their time between Bellingham, Massachusetts and the Lacroix Property in Narragansett. *Id.* at 208:9-12. Mr. Lacroix credibly testified that he did not observe any physical indication that Plaintiffs crossed any of Defendants' properties to gain access to Seaweed Beach *Id.* at 286:2-8. Mr. Lacroix testified that after Plaintiffs purchased their property in 1986, he never saw any of the McElroys on Seaweed Beach or crossing any of Defendants' properties to access Seaweed Beach. *Id.* at 289:7-18. Mr. Lacroix further testified that after purchasing his property in 1979, he never observed anyone from the McElroy Property cross any of Defendants' properties to access Seaweed Beach, prior to Plaintiffs' purchase in 1986. *Id.* at 292:1-8.

Defendant Paul Anthony testified that the Anthonys purchased their property in 2000 and used the property three weeks out of the year. *Id.* at 315:8-11; 333:12-17. In May 2016, they became full-time residents of Narragansett. *Id.* Mr. Anthony also testified that he never saw anyone from the McElroy Property cross the Stephens Property or the Lacroix Property since he began renting what is now the Anthony Property in 1993. *Id.* at 320:9-15. Mr. Anthony testified that he did not observe any physical indications on the ground that showed a pathway leading from the McElroy Property across any Defendants' properties to Seaweed Beach. *Id.* at 319:9-20.

Defendant Marilyn Stephens testified that she and her husband[9] purchased their property from the Dareliuses on November 1, 2010. (June 4 Tr. 346:3-7.) At the time, they resided full-time in Rehoboth, Massachusetts. They would utilize the Stephens Property every weekend from the time of purchase in November 2010 through the summer of 2011. *Id.* at 346:5-16. Mrs. Stephens testified that during the summer of 2011, she saw Plaintiffs on the weekends at the Property, and that although the families would occasionally wave at one another, no substantive conversations occurred. *Id.* at 355:11-16; 357:16-23. Mrs. Stephens testified that she and her husband rebuilt the Stephens Property in 2011-2012. *Id.* at 354:3-25; 355:25-356:6. Following the rebuilding, the Stephenses spent most of their weekends at their property. *Id.* at 357:5-23. Mrs. Stephens testified that a thicket separated the McElroy Property from the Stephens Property, and she testified that the Stephenses replaced the thicket with a fence, and that she never saw anyone from the McElroy Property attempt to cross over the thicket or the fence to cross the Stephens Property to access Seaweed Beach. *Id.* at 361:20-362:3; 362:17-363:11.

II

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure states that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon[.]" Super. R. Civ. P. 52(a). In a non-jury trial, "'[t]he trial justice sits as a trier of fact as well as of law.'" *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984)). In that role, the trial justice "'weighs

[9] Defendant Marilyn O. Stephens and her late husband Edward Stephens, III purchased the Stephens Property together in 2010. (June 4 Tr. 347:14-20.) Edward Stephens, III was originally named as a Defendant in this case and passed away during the pendency of the litigation. (June 4 Tr. 347:14-20; Suggestion of Death, Apr. 26, 2021.)

and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.'" *Id.* (quoting *Hood*, 478 A.2d at 184). "Also, it is permissible for the trial justice to draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations." *Rhode Island Mobile Sportfisherman, Inc. v. Nope's Island Conservation Association, Inc.*, 59 A.3d 112, 118 (R.I. 2013) (citing *Cahill v. Morrow*, 11 A.3d 82, 86 (R.I. 2011)) (internal quotations omitted).

The trial justice "'need not engage in extensive analysis to comply with'" the requirements of Rule 52(a). *JPL Livery Services, Inc. v. State of Rhode Island Department of Administration*, 88 A.3d 1134, 1141 (R.I. 2014) (quoting *Connor v. Schlemmer*, 996 A.2d 98, 109 (R.I. 2010)). The '"trial justice's analysis of the evidence and findings in the bench trial context need not be exhaustive,"' and '"if the decision reasonably indicates that [the trial justice] exercised [his or her] independent judgment in passing on the weight of the testimony and the credibility of the witnesses[,] it will not be disturbed on appeal unless it is clearly wrong or otherwise incorrect as a matter of law."' *Id.* (alteration in original) (quoting *Notarantonio v. Notarantonio*, 941 A.2d 138, 144-45 (R.I. 2008)).

The Supreme Court's mandate rule '"provides that a lower court on remand must implement both the *letter* and *spirit* of the [Supreme Court's] mandate, and may not disregard the explicit directives of that [C]ourt."' *Hagopian v. Hagopian*, 960 A.2d 250, 253 (R.I. 2008) (quoting *RICO Corp. v. Town of Exeter*, 836 A.2d 212, 218 (R.I. 2003)). "'When a case has been once decided by [the Supreme Court] on appeal, and remanded to the [Superior Court], . . . [the Superior Court] . . . cannot . . . intermeddle with it, further than to settle so much as has been remanded.'" *Butterfly Realty v. James Romanella & Sons, Inc.*, 93 A.3d 1022, 1032 (R.I. 2014) (quoting *Pleasant Management LLC v. Carrasco*, 960 A.2d 216, 223 (R.I. 2008)). Lower courts

cannot "exceed the scope of the remand or open up the proceeding to legal issues beyond the remand." *Sansone v. Morton Machine Works, Inc.*, 957 A.2d 386, 398 (R.I. 2008) (internal quotation omitted). Instead, "'whatever was before [the Supreme Court] . . . is considered as finally settled,'" and "'[t]he [Superior Court] is bound by the decree as the law of the case, and must carry it into execution according to the mandate.'" *Pleasant Management LLC*, 960 A.2d at 223 (quoting *United States v. Thrasher*, 483 F.3d 977, 981 (9th Cir. 2007)).

III

Analysis

An easement is a nonpossessory "interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose[.]" *Rhode Island Economic Development Corporation v. Parking Company, L.P.*, 892 A.2d 87, 107 (R.I. 2006) (quoting Black's Law Dictionary 548 (8th ed. 2004)). This "interest in land [is] capable of creation or transfer only by operation of law, or by grant or prescription." *Ham v. Massasoit Real Estate Co.*, 42 R.I. 293, 298-99, 107 A. 205, 208 (1919).

At issue in this case is whether Plaintiffs have an easement appurtenant, which is an easement that benefits a dominant tenement, burdens a servient tenement, and runs with the land.[10] *See McAusland v. Carrier*, 880 A.2d 861, 863 (R.I. 2005). The land with the benefit of the easement is the dominant tenement, while the land burdened by the easement is the servient

[10] An easement appurtenant is different from an easement in gross, which is "'merely a personal right to use the land of another'" that "'does not pass with the land.'" *McAusland v. Carrier*, 880 A.2d 861, 863 (R.I. 2005) (internal quotation omitted). An easement in gross "benefit[s] a person directly (not solely by virtue of his or her status as the owner of a benefited property); they have a servient tenement, but no dominant tenement." *McAusland*, 880 A.2d at 863 (citing 7 Thompson on Real Property § 60.02(f) at 399 (Thomas ed. 1994)).

tenement, and the servient tenement is burdened by the dominant tenement's permitted use of the servient tenement. *Cadwalader v. Bailey*, 17 R.I. 495, 499, 23 A. 20, 21-22 (1891).

It is well settled that easements appurtenant run with the land, *McAusland*, 880 A.2d at 863, and will pass by deed of the dominant tenement even if the easement is not specifically mentioned within that deed. *Sullivan Granite Co. v. Vuono*, 48 R.I. 292, 294-95, 137 A. 687, 688 (1927). "Once an easement appurtenant has been established[,] it becomes an incident of possession of the dominant tenement and it passes automatically with any effective transfer of the land." *Crawford Realty Co. v. Ostrow*, 89 R.I. 12, 19, 150 A.2d 5, 9 (1959). The owner of the dominant tenement "may extinguish the easement appurtenant by specifically excluding it from a conveyance of the dominant tenement." *Id.* at 19-20, 150 A.2d at 9 (citation omitted). These principles are codified in § 34-11-28, which provides:

> "In any conveyance of real estate all rights, privileges, and appurtenances belonging or appertaining to the granted estate shall be included in the conveyance, unless a different intention shall clearly appear in the deed, and it shall be unnecessary to enumerate or mention them either generally or specifically." Section 34-11-28.

A subdivision of the dominant estate does not terminate an easement appurtenant. *Crawford Realty Co.*, 89 R.I. at 19, 150 A.2d at 9. Rather, in the absence of explicit exclusion, an easement appurtenant will continue on for the benefit of the owners of the subdivided parcels. *Id.*

A

The 1929 Express Easement Upon Seaweed Beach to Reach the Ocean

1

1929 Express Easement

When tasked with interpreting a deed, this Court considers "'all of the facts and circumstances existing at the time of [the deed's] execution . . . and effect will be given to the intention of the parties whenever that intent can be ascertained."' *Catalano v. Woodward*, 617

A.2d 1363, 1366 (R.I. 1992) (quoting *Sullivan Granite Co.*, 48 R.I. at 294-95, 137 A. at 688). "The terms of the grant of an easement are subject to construction in the same manner as are the terms of a deed." *Vallone v. City of Cranston Department of Public Works*, 97 R.I. 248, 258, 197 A.2d 310, 316 (1964). It is well settled that when construing a written instrument such as a deed purporting to create an easement, the court must "effectuate the intent of the parties." *Carpenter v. Hanslin*, 900 A.2d 1136, 1147 (R.I. 2006). The court must also interpret a deed according to the plain meaning of its terms. *Kusiak v. Ucci*, 53 R.I. 36, 38, 163 A. 226, 226 (1932). '"When the written terms of an agreement are clear and unambiguous, they can be interpreted and applied to the undisputed facts as a matter of law[,]"' *Carpenter*, 900 A.2d at 1147 (quoting *Mattos v. Seaton*, 839 A.2d 553, 557 (R.I. 2004), and "neither oral testimony nor extrinsic evidence will be received to explain the nature or extent of the rights acquired." *Id.* (citing *Waterman v. Waterman*, 93 R.I. 344, 349, 175 A.2d 291, 294 (1961)). Valid deeds are presumed to "correctly state[] the real intent of the parties[,]" and "[w]here there is no fraud, a deed is *strong* evidence of the intention of the parties." *Vanderford v. Kettelle*, 75 R.I. 130, 142, 64 A.2d 483, 488-89 (1949) (emphasis added).

Plainly, the clear and unambiguous language of the 1929 easement deed granted Davis an express easement upon Seaweed Beach. (Pls.' Post-Trial Mem. 11; Defs.' Post-Trial Mem. 23; Joint Statement ¶ 4; Joint Ex. 4-D.) The express easement appurtenant benefitted the Davis Heritage—Lots 1 and 2—as the dominant estate and burdened the Knowles-Champlin-Champlin-Tucker beach property (Seaweed Beach) as the servient estate. (Joint Statement ¶ 4; Joint Ex. 4-D.) The 1929 express easement contained a broad grant, permitting Davis, as owner of the Davis

Heritage[11] at the time, to enter Seaweed Beach from any point on her property, and thereby reach the ocean. (Joint Ex. 4-D.)

2

Subsequent Subdivision of the Davis Heritage

Following the 1929 express easement granted to the Davis Heritage, subsequent conveyances included that easement because express easements pass by deed of the dominant tenement "unless a different intention shall clearly appear in the deed[.]" Section 34-11-28. Moreover, the subdivision of the Davis Heritage did not terminate the express easement, because when a dominant estate is subdivided, the easement becomes subdivided and passes to each separate part of the subdivided dominant estate. *Crawford Realty Co.*, 89 R.I. at 19, 150 A.2d at 9.

a

Effect of the Subdivision of the Davis Heritage on Defendants' Properties

Accordingly, with respect to all the Defendants' properties, the 1929 express easement upon Seaweed Beach survived the subdivision of the Davis Heritage, because it was not specifically excluded from the deeds. *Id.* at 19, 150 A.2d at 9. All Defendants' properties therefore continue to enjoy an express easement upon Seaweed Beach and thereby to reach the ocean. *See* Joint Ex. 4-D; *Sullivan Granite Co.*, 48 R.I. at 294-95, 137 A. at 688.

[11]Because all the parcels were commonly owned by Davis beginning in 1926, and the first severance did not occur until 1944, Davis had unity of ownership when she received the 1929 easement upon Seaweed Beach to reach the ocean. *See Wiesel v. Smira*, 49 R.I. 246, 248-49, 142 A. 148, 149 (128); *see also O'Rorke v. Smith*, 11 R.I. 259, 262 (1875).

b

Effect of the Subdivision of the Davis Heritage on the McElroy Property

The effect of the subdivision of the Davis estate with respect to the McElroy Property requires a separate analysis by the Court. In this analysis, the Court must consider two distinct aspects of the subdivision of the Davis Heritage. First, the Court must consider whether any deed in the chain of title to the McElroy Property excluded the 1929 express easement and whether the McElroy Property's easement upon Seaweed Beach was otherwise extinguished by operation of law, given that the McElroy Property no longer abuts Seaweed Beach.

(i)

Exclusion

There is no conveyancing instrument in the McElroy Property chain of title extinguishing the 1929 express easement upon Seaweed Beach. (Joint Exs. 12-L, 21-U, 22-V.) Although the 1960 Babcock deed does not reference the 1929 easement deed, it states that the conveyance is "[s]ubject to restrictions of record." (Joint Ex. 12-L.) Similarly, the 1983 Darelius deed, while void of reference to the 1929 express easement, nevertheless clearly affirms that the transfer is "[s]ubject to restrictions, easements and right of way of record." (Joint Ex. 21-U.) Finally, the 1986 McElroy deed does not exclude the 1929 express easement, rather it incorporates the 1929 express easement by reference, including the specific page in the Land Evidence Records on which the 1929 easement deed was recorded: Book 10, page 10. (Joint Ex. 22-V.) Furthermore, read plainly, the deeds with respect to the McElroy conveyances do not extinguish the easement upon Seaweed Beach. *Kusiak,* 53 R.I. at 38, 163 A. at 226; *Crawford Realty Co.,* 89 R.I. at 19, 150 A.2d at 9.

(ii)

Operation of Law

The Defendants maintain that the easement upon Seaweed Beach as it relates to the McElroy Property was extinguished by operation of law as a result of the subdivision of the Davis Heritage, given that the McElroy Property no longer abuts Seaweed Beach. The Plaintiffs maintain that they enjoy the easement upon Seaweed Beach not only by operation of law but also by grant from the Dareliuses.

The law is established that, in some circumstances, subdivision of a dominant estate may have the effect of extinguishing an easement appurtenant if the dominant estate is subdivided in such a way that "the owner of the subdivided portion has *no legal means* of reaching the passageway," and therefore the easement may no longer be used for the benefit of that subdivided portion of the estate. *Crawford Realty*, 89 R.I. at 20, 150 A.2d at 10 (emphasis added). Furthermore, if a dominant tenement is so divided that a portion thereof is completely deprived of access to a passageway, that easement can no longer be used for the benefit of the subdivided portion of the dominant tenement, and thus is extinguished. *See id.* In order for the easement to be so extinguished, it must appear that the owner of the subdivided property has no legal means of reaching the passageway, and as long as there is some physical connection between the lot and the passageway, the easement is still of value and thus is not destroyed, even though the land does not abut the easement. *Id.*

The evidence presented at trial establishes that the McElroy Property remained a contiguous part of the unified Davis Heritage until 1960 when it was conveyed to the Babcocks because, prior to the 1960 conveyance, the McElroy Property comprised the western portion of the remainder of the Davis Heritage, which continued to abut Seaweed Beach. *See* Joint Ex. 12-L. In

1960, however, a conveyance was made of the parcel now known as the McElroy Property to the Babcocks, resulting in the severance of that parcel from its previous contiguity with Seaweed Beach. *Id.*

The Dareliuses acquired the Stephens Property on April 19, 1958, when Walter and Grace Potter conveyed this parcel to them by warranty deed (the 1958 Darelius deed), recorded on May 2, 1958 in Book 44 at Page 128. (Joint Statement ¶ 11; Joint Ex. 11-K.) Walter Potter later executed a second warranty deed, on December 2, 1965 (the 1965 Darelius deed), conveying the same parcel to the Dareliuses, recorded in Book 58 at Pages 180-81. (Joint Statement ¶ 17; Joint Ex. 17-Q.) The 1965 Darelius deed explicitly conditioned the conveyance of the parcel "subject to all covenants and agreements, on the part of said Carrie M. Davis, her heirs and assigns, to be kept and performed[.]" (Joint Ex. 17-Q.)

It is clear that, on November 15, 1983, the Babcocks conveyed the McElroy Property to Conrad and Gail Darelius (the Dareliuses) by warranty deed. (Joint Ex. 21-U.) Therefore, the Dareliuses became the owners of two abutting parcels stemming from the Davis Heritage. These parcels later became the McElroy Property and the Stephens Property. (Joint Exs. 11-K, 21-U.)

Based on this credible evidence of the chain of title, this Court concludes that the McElroy Property was physically separated from Seaweed Beach from 1960 until 1983 when the Dareliuses purchased the McElroy Property from the Babcocks (Joint Ex. 21-U.)

c

Effect of the Dareliuses' 1983 Purchase of the McElroy Property

In 1983, there was a unification of the McElroy Property and the Stephens Property in one ownership under the Dareliuses. The legal effect of the unification of these Properties under the Dareliuses is of legal significance because of the doctrine of merger. Under the doctrine of merger, when two estates are acquired by the same owner and thereby unified by common ownership, the

two estates are merged into a single estate. 31 C.J.S. § 153. *See also In re Fanaras*, 263 B.R. 655 (Bankr. D. Mass. 2001) (Massachusetts law); *In re Steffien*, 415 B.R. 824 (Bankr. D.N.M. 2009) (New Mexico law); *Bank of Wichitas v. Ledford*, 151 P.3d 103 (Okla. 2006); *Loughran v. Valley View Developers, Inc.*, 145 A.3d 815 (Pa. Commw. Ct. 2016). In the instant case, the effect of this merger of the McElroy Property and the Stephens Property was two-fold.

First, the 1983 merger of the two properties into one had the physical effect of absorbing the McElroy Property into the contiguous Stephens Property. As a result, the McElroy Property was once again physically part of the dominant estate with respect to the 1929 easement upon Seaweed Beach.

Second, the McElroy Property, now part of one unified property with the Stephens Property, enjoyed the same bundle of legal rights as the Stephens Property, including the easement upon Seaweed Beach and the easement to access Stanton Avenue.[12] "'[I]t is an established principle that the unrestricted grant of an easement gives the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement.'" *Friends of the Sakonnet v. Dutra*, 749 F. Supp. 381, 389 (D.R.I. 1990) (quoting 17 Am. Jur., *Easements*, § 96 at 993) (applying Rhode Island law); *see Bradley v. Warner*, 21 R.I. 36, 36, 41 A. 564, 565 (1898) (affirming right to enter land and repair dam as incident to *profit a prendre* to cut ice) ("The complainant . . . contends. . . that the grant of a thing carries with it all things as included without which the thing granted cannot be enjoyed." "We are inclined to the view taken by the

[12] The easement to access Stanton Avenue derives from the following language: "the right to pass and repass, on foot and with vehicles, to and from Stanton Avenue, . . . along and upon the driftway or roadway, as now established, . . ." which was in the deed from Carrie and Martha Davis to the Potters in 1944, and also included in express terms in the deed from the Walter H. Potter to the Dareliuses in 1965. *See* Jt. Exs. 7-G and 17-Q.

complainant."); *Hall v. Lawrence*, 2 R.I. 218, 235 (1852) (affirming right of way to access shore as incident to *profit a prendre* to collect seaweed and stones from beach) ("This right of way incident to the right of common falls under the head of *secondary easements*, and the objection raised that it was not appurtenant to the north farm and would not pass under the term appurtenance is not tenable.") (emphasis added).[13]

Here, the entire unified property was thus a dominant estate with respect to the easement upon Seaweed Beach. The unification allowed the Dareliuses, in subsequent conveyances, to extend the easement upon Seaweed Beach to the McElroy Property, along with any necessary incidents to that easement.

Furthermore, the 1983 merger of the McElroy Property and the Stephens Property cannot be said to have overburdened the longstanding easement to cross Seaweed Beach. This conclusion is underscored by the law in numerous New England jurisdictions[14] which allow extension of an

[13] A survey of the venerable maxims of our legal tradition provide further persuasive authority for the principle that a grant tacitly includes all its necessary incidents. *See* Appendix A, Black's Law Dictionary (11th ed. 2019) ("**Quando lex aliquid alicui concedit, omnia incidentia tacite conceduntur**. When the law gives anything to anyone, it gives tacitly all that is incident to it.") ("**Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest**. When anything is granted, that also is granted without which the thing itself cannot exist.").

[14] The majority view among jurisdictions is that "the dominant owner may not use an appurtenant easement to benefit any property other than the dominant estate." John W. Bruce & James W. Ely, *The Law of Easements & Licenses in Land* § 8:14 (2022). The purpose of this rule is to prevent holders of easements from materially increasing the burden on their respective servient estates and "was 'intended to protect the servient estate from the use of an easement in a manner or to an extent not within the reasonable expectations of the parties at the time of its creation.'" *Il Giardino, LLC v. Belle Haven Land Co.*, 757 A.2d 1103, 1111 (Conn. 2000) (quoting *Carbone v. Vigliotti*, 610 A.2d 565, 569 (Conn. 1992). The instant case, however, does not conflict with this principle, because in this case, the McElroy Property was in no way an "extension" of the original dominant estate with respect to Seaweed Beach, because it was part of the original Davis Heritage, all of which was granted in the express easement upon Seaweed Beach in 1929.

easement to a nondominant parcel[15] so long as this does not materially increase the burden on the servient estate. John W. Bruce & James W. Ely, *The Law of Easements & Licenses in Land* §§ 2:8, 8:14 (2022) (citing *e.g.*, *Abington Ltd. Partnership v. Heublein*, 778 A.2d 885, 891-95 (Conn. 2001) (allowing extension of easement to after-acquired contiguous property)[16]; *Carbone*, 610 A.2d at 569 (mere addition of land to dominant estate does not constitute overburden); *Ettinger v. Pomeroy Limited Partnership*, 97 A.3d 1133, 1137-38 (N.H. 2014) (holding that validity of easement extension to after-acquired nondominant land depended on the intent of the grantor); *Soukup v. Brooks*, 977 A.2d 551, 559-60 (N.H. 2009) (confirming extension of right of way benefit to nondominant estate when such use did not constitute overburden); *see also Heartz v. City of Concord*, 808 A.2d 76, 80 (N.H. 2002) (determining that jurisdiction's case law "does not foreclose the possibility of an easement benefiting a non-dominant tenement").

Finally, the instant case stands in sharp contrast to case law analyzing what our sister jurisdictions have determined constitutes misuse of an easement. *See, e.g.*, *Ezikovich v. Linden*, 618 A.2d 570 (Conn. 1993) (construction of boat storage rack was misuse because boat storage rack was not necessary to enjoy an easement for boating purposes); *McCullough v. Waterfront Park Association, Inc.*, 630 A.2d 1372 (Conn. 1993) (building four wooden docks over prescriptive waterfront easement was misuse); *Connecticut Light & Power Co. v. O'Hara*, No. 323020, 1997

[15] In the instant case, moreover, the McElroy Property cannot be said to be a "nondominant" estate: First, in 1929, the McElroy Property was part of the original dominant estate with respect to Seaweed Beach because it was part of the original Davis Heritage, all of which was granted the express easement upon Seaweed Beach in 1929. Second, in 1983, the McElroy Property was merged with the Stephens Property, thereby becoming a physical and legal part of the dominant estate with respect to the Seaweed Beach easement.

[16] In *Abington Ltd. Partnership v. Heublein*, 717 A.2d 1232 (Conn. 1998) for example, the Supreme Court of Connecticut held that extending an easement benefit to a nondominant parcel was not a *per se* overburden on the servient estate; rather, the court inquired into the "proposed use and the likely development of the dominant estate" to make this factual determination. *Abington Ltd. Partnership*, 717 A.2d at 1240.

WL 139358 (Conn. Super. Ct. 1997) (winter storage of boats misuse because not incident or necessary to enjoy lakefront easement); *Poire v. Manchester*, 506 A.2d 1160 (Me. 1986) (extension of beach easement to business invitees of campground impaired the reasonable enjoyment of neighboring beachfront cottage owners); *Gentile v. Mahoney*, No. 902189, 1995 WL 808868 (Mass. Super. Ct. 1995) (lake access easement for purposes of swimming did not include right to transport boats); *Cabal v. Kent County Road Commission*, 250 N.W.2d 121 (Mich. 1976) (boating access easement included right to maintain dock but parking cars on the strip was misuse); (building permanent structures on the land was misuse of hunting and fishing easement); *but see, e.g.*, *Barchenski v. Pion*, 402 N.E.2d 1095, 1095 (Mass. App. Ct. 1980) (easement for "general beach purposes" was not limited to the uses of the dominant estate when the easement was created); *Higgins v. Douglas*, 758 N.Y.S.2d 702 (App. Div. 3d Dep't 2003) (the rights to an appurtenant easement pass to the subsequent owners of each subdivided parcel, even if the resulting dominant and servient estates are not contiguous so long as deed does not expressly prohibit such extension and so long as no additional burden is imposed upon the servient tenement by such use). This unification of the properties, however, was short-lived because the Dareliuses' 1986 sale of the McElroy Property to the Plaintiffs once again had the effect of subdividing the lots and their appurtenant rights, as well as the effect of once again physically separating the McElroy lot from Seaweed Beach.

d

Effect of the Dareliuses' 1986 Sale of the McElroy Property to Plaintiffs

The Court must next consider the legal effect of the Dareliuses' 1986 sale of the McElroy Property to Plaintiffs. Here, Plaintiffs presented uncontroverted evidence of granting language in the land sale agreement and references to the easement deed on the part of the Dareliuses' that clearly demonstrates their intent to convey an effective easement to the McElroys. Plaintiffs also

presented credible testimony regarding the advertisement and sale negotiations for their property, which both also evidence an intent on the part of the Dareliuses' to convey good title to an easement over their property for Plaintiffs to use to access Seaweed Beach. The Court is satisfied that this clear and convincing evidence is sufficient to find that the intent of the Dareliuses at the time of their conveyance to Plaintiffs was to convey the property along with an effective easement to cross the Darelius' land to access Seaweed Beach. Furthermore, the 1929 Champlin easement deed contained language allowing perpetual use "for all purposes connected with the lawful use of Grantee's said lands, to pass and repass. . . ," which this Court has determined does not exclude benefiting after-acquired nondominant parcels. (Joint Ex. 4-D.)

It is clear to the Court that the Dareliuses intended to extend their easement upon Seaweed Beach to what became the McElroy Property at the time of the 1986 sale because they clearly intended to convey to Plaintiffs a valid title in their easement upon Seaweed Beach. It is clear that the Dareliuses intended their actions to have the effect of granting a valid easement to Plaintiffs because the deed specifically referenced the 1929 Champlin easement grant. Therefore, the Court concludes that the Dareliuses intended to extend their easement upon Seaweed Beach to the entirety of their unified holdings prior to conveying the McElroy Property.

The extension of an easement benefit does not change the nature of the easement. *See generally Abington Ltd.*, 778 A.2d 885 (affirming trial court decision allowing express easement appurtenant to extend benefit to plaintiff's contiguous lot). Therefore, to give effect to the clear intent of the Dareliuses', the Court concludes that the Dareliuses extended the express appurtenant easement benefits of both their easement upon Seaweed Beach and their easement of access to Stanton Avenue to the McElroy Property at the time of the conveyance. The Court also concludes that permission to cross the Stephens Property was a necessary incident to the McElroy's

enjoyment of the easement upon Seaweed Beach, which the Dareliuses had the legal right to grant to the McElroys, and which is valid regardless of whether it was expressly granted in the deed. Nevertheless, the Court will continue its analysis to determine whether an implied easement also exists to allow the McElroys to cross the Stephens Property to access their easement upon Seaweed Beach.

B

Whether an Implied Easement Exists Allowing Plaintiffs to Cross Defendants' Properties

It is clear that Plaintiffs have an express easement upon Seaweed Beach to reach the ocean. The McElroy Property, however, does not abut Seaweed Beach.[17] The grant of this easement would be meaningless unless there is some secondary easement or legal permission for the McElroys to reach Seaweed Beach from an access point on their property.

Regardless, the Court will continue its analysis to determine whether there also exists an implied easement allowing Plaintiffs to cross over the Stephens Property or other Defendants' properties in order to enjoy the express easement upon Seaweed Beach. To make such determination, the Court must examine the relevant facts and circumstances. The Court will address each in turn.

[17] Our Supreme Court instructed this Court to determine "whether an implied easement or easement by necessity exists allowing the McElroys to cross over the Stephens [P]roperty or any of the other defendants' properties[,]" given that "the McElroy [P]roperty no longer directly abuts Seaweed Beach[.]" *McElroy*, 226 A.3d at 1292.

1

Whether Plaintiffs Have an Implied Easement[18] to Cross the Stephens Property

An implied easement is an easement "which the law imposes by inferring the parties to a transaction intended that result although they did not express it." 25 Am. Jur. 2d *Easements* § 18 (2004). To establish whether an implied easement exists, a claimant must first demonstrate that there was unity of ownership prior to the time of severance. *Wellington Condominium Association v. Wellington Condominium Association*, 68 A.3d 594, 603 (R.I. 2013). In addition, a claimant must show by clear and convincing evidence that the claimed easement was (1) apparent, (2) continuous, and (3) reasonably necessary for the enjoyment of the property as it existed when the severance was made. *Id*.; *Wiesel v. Smira*, 49 R.I. 246, 246, 142 A. 148, 151 (1928).

a

Unity of Ownership

An implied easement is created "[u]pon [the] severance of common ownership," and arises from a "preexisting condition often referred to as a 'quasi-easement.'" *Wiesel*, 49 R.I. at 248-49,

[18] Plaintiffs contend that the 1986 McElroy deed effectuated an *express* grant of an easement to cross the Stephens Property. (Pls.' Post-Trial Mem. 36-37.) As described above, the 1986 McElroy deed states, in pertinent part:

> "Those certain tracts or parcels of land, with all buildings and improvements thereon, located at 79 Stanton Avenue, Narragansett[,] Rhode Island . . . . Together with and subject to all easements, rights of way and restrictions of record. (See Book 8, page 528, Book 8, page 594, Book 10, page 10, Book 15, page 668 and Book 47, page 355.)" (Joint Ex. 22-V.)

The 1986 McElroy deed specifically refers to the 1929 easement deed, recorded on Book 10, page 10 of the Narragansett Land Evidence Records. *Id.* The plain and unambiguous language of the 1986 McElroy deed refers to a previously granted express easement upon Seaweed Beach. The 1986 McElroy deed does not, however, by its plain terms, effectuate an additional grant of an express easement to cross over the Stephens Property because it does not contain the grant language from the land sale agreement.

142 A. at 149. *See also Bovi v. Murray*, 601 A.2d 960, 962 (R.I. 1992). There can be no determination of an implied easement without unity of ownership. *O'Rorke v. Smith*, 11 R.I. 259, 262 (1875).

In 1958, the Dareliuses acquired what is now known as the Stephens Property from the Potters. (Joint Ex. 17-Q.) The credible evidence on this record establishes that in 1983, unity of ownership was established when the Dareliuses acquired the McElroy Property. *See Wiesel*, 49 R.I. at 248-49, 142 A. at 149. (May 12 Tr. 21:14-22; Joint Ex. 22-V.) The unified ownership was severed when the Dareliuses sold Plaintiffs the McElroy Property in 1986. *See O'Rorke*, 11 R.I. at 262. Accordingly, unity of ownership existed at the time of the 1986 conveyance of the McElroy Property from the Dareliuses to Plaintiffs.

b

Continuous and Apparent

A claimed easement is "continuous" where it is found that the easement has been used regularly. *See Wiesel*, 49 R.I. at 246, 142 A. at 150. A claimed implied easement is "apparent" if its "existence is indicated by signs which might be seen or known on a careful inspection by a person ordinarily conversant with the subject." *Id.* Furthermore, "'[u]pon the severance of an heritage, a grant will be implied of all those continuous and apparent easements which have in fact been used by the owner during the unity, though they have no legal existence as easements.'" *Caluori v. Dexter Credit Union*, 79 A.3d 823, 830 (R.I. 2013) (quoting *Wellington Condominium Association v. Wellington Cove Condominium Association*, 68 A.3d 594, 603 (R.I. 2013)).

To establish the existence of an implied easement, a plaintiff must prove by clear and convincing evidence that the easement was "continuous" and "apparent." *Caluori*, 79 A.3d at 830. For an easement to be apparent, it must be accompanied with some "alteration of the tenements

which in its nature is obvious and permanent," and upon inspection may be seen "to be adapted to the use of the estate[.]" *Providence Tool Co. v. Corliss Steam Engine Co.*, 9 R.I. 564, 571 (1870).

With respect to whether the easement is "continuous" and "apparent," Plaintiffs argue that from 1986 to 2013, they crossed the driveway on the Stephens Property continuously and apparently to reach Seaweed Beach. (Pls.' Post-Trial Mem. 45.) Defendants assert that "continuous and apparent easements" do not include a right of way. (Defs.' Post-Trial Mem. 120-21.)

The reliable and credible evidence contained within the trial record indicates that shortly after Plaintiffs purchased their property from the Dareliuses in 1986, a wooden fence was installed along the edge of their property with a gate that opened onto the dirt road leading to the Stephens Property, which at the time was owned by the Dareliuses. (May 13 Tr. 173:19-174:5.) Plaintiffs installed a second fence ten to fifteen years following the first fence's deterioration. *Id.* at 221:11-16. In installing the replacement fence, Plaintiffs did not include a gate but instead created an opening in the fence onto the road abutting the Stephens Property. *Id.* Mr. McElroy credibly testified that from 1986 through 2013, his family would regularly walk along the left side of the driveway on the Stephens Property to cross the Stephens Property to reach Seaweed Beach. *Id.* at 217:20-24; 228:24-229:3. Plaintiffs provided this Court with various credible photographs of the McElroy family both on Seaweed Beach and on the Stephens Property. *Id.* at 171:12-173:16; Pls.' Ex. 16.

There was no visible path worn from the McElroy Property through the Stephens Property because the driveway was paved three or four years after Plaintiffs purchased their property. The credible evidence established that the McElroys would walk along the paved driveway to cross the Stephens Property and gain access to Seaweed Beach. (May 13 Tr. 231:13-17.) Although no

visible worn path was created, the installation of the fence with the opening toward the driveway on the Stephens Property is an obvious and permanent construction, rendering the easement sufficiently apparent. *See Providence Tool Co.*, 9 R.I. at 572. Plaintiffs' credible testimony in conjunction with the photographs of the McElroy family on the right-of-way and on Seaweed Beach sufficiently demonstrates that the family used the right-of-way continuously since Plaintiffs purchased the property in 1986. (May 13 Tr. 171:8-173:16; Pls.' Ex. 16.) Although a right-of-way typically does not qualify as a "continuous" easement, roads and ways permanently marked in such a way that their use with respect to a claimant's tenement is obvious and apparent are excepted from this requirement. *See Providence Tool Co.*, 9 R.I. at 573-74. These markings clearly gave Defendants Marilyn O. Stephens and Edward Stephens, III inquiry notice of Plaintiffs' continuous and apparent use of the easement when they purchased their property. Therefore, the easement over the driveway on the Stephens Property was continuous and apparent from the time of Plaintiffs' purchase in 1986 until the Stephenses impeded Plaintiffs' access in 2013. *See Providence Tool Co.*, 9 R.I. at 572.

c

Reasonably Necessary

Finally, with respect to the requirement that the claimed easement be "reasonably necessary for the enjoyment of the claimant's parcel prior to severance[,]" *Wellington Condominium Association*, 68 A.3d at 603, it bears noting that "'[a]n implied easement is predicated upon the theory that when a person conveys property, he or she includes or intends to include in the conveyance whatever is necessary for the use and the enjoyment of the land retained.'" *Caluori*, 79 A.3d at 830-31 (quoting *Hilley v. Lawrence*, 972 A.2d 643, 650 (R.I. 2009)). In determining the element of reasonable necessity, the Court must determine "whether the easement is reasonably necessary for the convenient and comfortable enjoyment of the property as it existed when the

severance was made." *Vaillancourt v. Motta*, 986 A.2d 985, 987-88 (R.I. 2009) (internal quotation omitted). "An implied easement is predicated upon the theory that when a person conveys property, he or she includes or intends to include in the conveyance whatever is necessary for the use and the enjoyment of the land retained." *Bovi*, 601 A.2d at 962.

The test of reasonable necessity for an implied easement is "whether the easement is reasonably necessary for the convenient and comfortable enjoyment of the property as it existed when the severance was made." *Wiesel*, 49 R.I. at 249, 142 A. at 150. The question of necessity is "often complex and difficult of solution; the principle, however, is settled, and the difficulty arises only in its application." *Evans v. Dana*, 7 R.I. 306, 310 (1862). "[N]o necessity can exist and consequently no easement can be implied where a substitute can be procured without unreasonable trouble or expense." *Wiesel*, 49 R.I. at 246, 142 A. at 150; *see Cheever v. Graves*, 592 N.E.2d 758, 763 (Mass. App. Ct. 1992) (finding no reasonable necessity to support implied easement for beach access because plaintiffs failed to establish that at time of severance, no alternative waterfront access existed).

Mr. McElroy credibly testified about his family's intent to use the McElroy Property as a beach house and the Dareliuses' knowledge of that intent. (May 13 Tr. 162:1-13.) Mr. McElroy testified that he first became aware of the property's availability through the Dareliuses' advertisement in the local newspaper, which advertised the property as being located "steps from the beach." (May 13 Tr. 158:11-25); *Leahy v. Graveline*, 971 N.E.2d 307, 312 (Mass. App. Ct. 2012) (considering grantors' advertisement of inland lots as "shore lots" as evidence of intent when finding implied easement for inland lot owners). Further, an explicit right-of-way was included in the purchase and sales agreement as well as a reference to the 1929 easement in the 1986 McElroy deed. (Pls.' Ex. 1, Joint Ex. 22-V.) The purchase and sales agreement between Plaintiffs and the

Dareliuses and the 1986 McElroy deed's reference to the 1929 express easement clearly evinces the Dareliuses' intent to grant a right of way to Plaintiffs. (Pls.' Ex. 1, Joint Ex. 22-V.)

Therefore, the Court concludes that the Dareliuses intended to convey to Plaintiffs a right-of-way to cross what is now the Stephens Property driveway to reach Seaweed Beach. *See Bovi*, 601 A.2d at 962; *see also Labounty v. Vickers*, 225 N.E.2d 333, 338-39 (Mass. 1967) (finding that inland homeowners had implied easement to access beach due to, *inter alia*, grantor's intent). The credible evidence presented at trial demonstrated that the Dareliuses believed that access to Seaweed Beach via the Stephens Property was reasonably necessary to the convenient and comfortable enjoyment of the McElroy Property. *See Wiesel*, 49 R.I. at 249, 142 A. at 150; *Evans*, 7 R.I. at 310 (describing necessity as "*proper* enjoyment" of the dominant estate) (emphasis added); *McBurney v. Cirillo*, 889 A.2d 759, 799-800 (Conn. 2006), *overruled on other grounds by Batte-Holmgren v. Commissioner of Public Health*, 914 A.2d 996 (Conn. 2007) (describing necessity as "not absolute" but rather, "*highly convenient and beneficial for the enjoyment*" of the dominant estate).

This Court concludes that Plaintiffs have established by clear and convincing evidence that an implied easement existed at the time of the 1986 deed conveying the McElroy Property to Plaintiffs. First, there was unified ownership between the McElroy Property and the Stephens Property from 1983 to 1986. (May 12 Tr. 21:14-22; Joint Ex. 22-V.) Second, Plaintiffs' use of the driveway on the Stephens Property to cross the Stephens Property and thereby to reach Seaweed Beach was continuous, apparent, and reasonably necessary to enjoy the McElroy Property. (May 13 Tr. 158:11-162:13; 171:8-173:16; Pls.' Ex. 16.) Third, at the time of the sale to Plaintiffs in

1986, the Dareliuses believed that access to Seaweed Beach via the Stephens Property was reasonably necessary[19] to the convenient and comfortable enjoyment of the McElroy Property.

Therefore, an implied easement exists that allows Plaintiffs to continue to use the driveway on the Stephens Property to access Seaweed Beach.

[19] This Court will briefly address the purported alternative route of access to Seaweed Beach. Defendants contend that no reasonable necessity exists to support the determination of an implied easement because they maintain that Plaintiffs have a reasonable alternate route to access Seaweed Beach. (June 4 Tr. 321:22-322:16.) Defendants refer to a right-of-way that runs approximately 150 yards adjacent to the McElroy Property and that connects Stanton Avenue to Seaweed Beach. *Id.* This right-of-way is identified as Lot 167 on the Town of Narragansett's Tax Assessor's Plat N. (Joint Ex. 34-HH.) In response, Plaintiffs argue that they cannot legally use Lot 167 as a right-of-way to access Seaweed Beach. (Pls.' Post-Trial Mem. 52-54.)

Lewis May granted Lot 167 to the Sea Breeze Improvement Association on December 3, 1964. (Defs.' Ex. L.) The May deed describes Lot 167 to be used by owners of lots located on the Daniel S. Knowles Farm Plat to access the beach. *Id.* The deed also refers to an easement held by the Town of Narragansett for pipelines. *Id.* The Daniel S. Knowles Farm Plat spans a large section of the residential land between Stanton Avenue and Sand Hill Cove Road (formerly known as Galilee Road). (Defs.' Ex. K.) However, the Daniel S. Knowles Farm Plat does not include any land that constitutes the Davis Heritage, including the McElroy Property. *Id.* Therefore, Plaintiffs are not owners referenced in the 1964 deed granting Lot 167 for owners of lots located within the Daniel S. Knowles Farm Plat to use as a means of access. (Defs.' Exs. K-L.) Accordingly, Plaintiffs do not hold an easement to use Lot 167 to access Seaweed Beach. *Id.*

Additionally, Lot 167 is an unmaintained grassy and sandy pathway. (May 13 Tr. 191:14-22). The right-of-way terminates with a concrete block and sewage pipe, draining onto Seaweed Beach *Id.* at 191:22-192:8; 196:15-20. The drainage of the sewage pipe in combination with the high levels of seaweed located on the eponymous beach results in an offensive smell and a slick covering over the beach rocks. *Id.* at 192:2-13. The sewage and seaweed amalgamation prevents parties from safely and comfortably descending from the concrete block onto the rocks of the beach because of the slippery conditions. *Id.* at 192:13-16. Therefore, due to both Lot 167's status as a private right-of-way and its uncomfortable and dangerous conditions, Lot 167 is not a reasonable alternative route of access to Seaweed Beach. *See Caluori v. Dexter Credit Union*, 79 A.3d 823, 830-31 (R.I. 2013); *Cheever v. Graves*, 592 N.E.2d 758, 763 (Mass. App. Ct. 1992).

2

Whether Plaintiffs Have Implied Easements to Cross Other Defendants' Properties

On remand, this Court was instructed to determine whether Plaintiffs have an implied easement or an easement by necessity to cross over any of Defendants' properties to reach Seaweed Beach. *McElroy*, 226 A.3d at 1292.

The Court has reviewed the pertinent testimony and evidence to determine that Plaintiffs have not satisfied their burden to prove by clear and convincing evidence the threshold issue that the Anthonys, the Lacroixes, or their respective predecessors held unity of title in the McElroy Property on which to support a finding of implied easement. *See O'Rorke*, 11 R.I. at 262 (there can be no determination of an implied easement without unity of ownership).

Therefore, the Plaintiffs' claims of implied easement over either the Anthony Property or the Lacroix Property fail on the merits. Accordingly, the Anthonys and the Lacroixes are entitled to judgment in their favor on their counterclaims.

C

Whether Easement by Necessity Exists Allowing Plaintiffs to Cross Defendants' Properties

The Court has determined that Plaintiffs have an implied easement to cross over the Stephens Property; notwithstanding, Plaintiffs have failed to establish an implied easement to cross over the other Defendants' properties.[20] The Court must now determine whether there exists an easement by necessity that would allow Plaintiffs to cross over the Stephens Property or the other Defendants' properties in order to enjoy the express easement upon Seaweed Beach.

[20] Plaintiffs have not met their threshold burden of showing a unity of title on which to base implying an easement over the Lacroix and Anthony properties.

To establish an easement by necessity, a plaintiff must demonstrate that a parcel of land became landlocked as a result of its severance from a single owner. *Hilley*, 972 A.2d at 653. The term "landlocked" has a very specific meaning under Rhode Island property law: A parcel of land is not considered landlocked if that parcel has access to a road that provides ingress and egress to that parcel of land so the owners may enjoy their property. *Id*; *Ondis v. City of Woonsocket ex rel. Treasurer Touzin*, 934 A.2d 799, 804 (R.I. 2007). "'An easement by necessity is limited to a factual scenario, in which a single owner partitions land and fails to reserve an express easement in favor of the parcel that has become landlocked as a result of the severance.'" *Caluori*, 79 A.3d at 831 n.5 (quoting *Hilley*, 972 A.2d at 653). "The law is clear that when an easement of necessity is no longer necessary, the right to that easement is terminated and the easement thereafter ceases to exist." *Ballard v. SVF Foundation*, 181 A.3d 27, 37 (R.I. 2018). "Generally, this occurs when another lawful way onto the property has been acquired, thus eliminating the necessity." *Id.*

Because an easement by necessity arises only in cases where a parcel is "landlocked" within the meaning of the legal doctrine discussed above, this Court concludes that there is no easement by necessity allowing Plaintiffs to cross over any of Defendants' properties. The McElroy Property cannot be said to be "landlocked" within the narrow definition that has evolved in Rhode Island property law. Plaintiffs here seek to cross over Defendants' properties in order to reach Seaweed Beach and the ocean—not to reach a public highway or private way that provides ingress and egress to the McElroy Property.

Plaintiffs argue that they are entitled to an easement by necessity because the McElroy Property became "landlocked" from Seaweed Beach when it was severed from the Davis Heritage. (Pls.' Pre-Trial Mem. 38; Pls.' Post-Trial Mem. 47.) Plaintiffs contend that crossing over Defendants' properties is "reasonably necessary for the convenient and comfortable enjoyment of

[Plaintiffs']" express easement upon Seaweed Beach. (Pls.' Pre-Trial Mem. 38-39; Pls.' Post-Trial Mem. 48.)

In response, Defendants argue that Plaintiffs do not have an easement by necessity because the McElroy Property has always fronted a public highway. (Defs.' Pre-Trial Mem. 15.) Defendants contend that the McElroy Property is not "landlocked" and therefore maintain that the factual circumstances preclude Plaintiffs' claim of an easement by necessity. *Id*. 15-16. Defendants further argue that "[w]ays of necessity are the products of circumstances where the usefulness of [the] land is at stake." (Defs.' Post-Trial Mem. 95.) Because the McElroy Property has fronted a public highway and improvements had been made on the McElroy Property when Plaintiffs purchased the property in 1986, Defendants argue that the McElroy Property is not "worthless" without this easement. *Id*. 97-98.

As set forth above, Rhode Island case law does not support Plaintiffs' interpretation of "landlocked." (Pls.' Post-Trial Mem. 47); *see Caluori*, 79 A.3d at 831 n.5. Stanton Avenue has continuously provided a direct means of ingress and egress to the McElroy Property from the time it was a part of the Davis Heritage through the present. (Joint Statement ¶¶ 12, 21; Joint Exs. 12-L, 22-V.) Because Plaintiffs can access their property via Stanton Avenue, the McElroy Property is not landlocked, as a matter of law, despite its separation from Seaweed Beach. *See Hilley*, 972 A.2d at 653; *Ondis*, 934 A.2d at 804. Plaintiffs therefore have failed to establish the requirements for an easement by necessity to cross over any of Defendants' properties because Plaintiffs' property is not landlocked, and therefore no necessity exists to connect the McElroy Property to a public highway. *See Caluori*, 79 A.3d at 831; *Ballard*, 181 A.3d at 37.

D

Resolution of Plaintiffs' Claims and Defendants' Counterclaims

In view of the conclusions reached pursuant to the Supreme Court's remand order instructing this Court to determine "whether an implied easement or easement by necessity exists allowing the McElroys to cross over the Stephens [P]roperty or any of the other defendants' properties[,]" *McElroy*, 226 A.3d at 1292, and pursuant to Rule 52 of the Superior Court Rules of Civil Procedure, the Court resolves Plaintiffs' Claims and Defendants' Counterclaims as follows:

As to Count I of the Amended Complaint (Am. Compl. ¶ 45), the Court determines that Plaintiffs are entitled to judgment quieting title to the easement in and over the Stephens Property. As to Count II of the Amended Complaint (Am. Compl. ¶ 47), the Court determines that Plaintiffs are entitled to a declaratory judgment establishing that they are the "true, lawful and proper owners and users of the [e]asement in and over the Stephenses' Property[,]" and that Plaintiffs have a right to use the easement, as set forth above, pursuant to chapter 30 of title 9, and Rule 57 of the Superior Court Rules of Civil Procedure. Finally, as to Count III of the Amended Complaint (Am. Compl. ¶¶ 49, 50), Plaintiffs are entitled to injunctive relief enjoining Defendants from interfering with Plaintiffs' use of the easement to cross the Stephens Property.

As to Defendants Anthonys' and Lacroix's Counterclaim Count I (Lacroix Answer to Am. Compl., Countercl. attached thereto, ¶¶ 69-70; Anthony Answer to Am. Compl., Countercl. attached thereto, ¶¶ 157-58) to quiet title to easements over the Defendants' respective properties, the Court determines that Lacroix and the Anthonys are entitled to a judgment quieting title to any easements to cross over the Anthony or Lacroix properties. As to Defendants Anthonys' and Lacroix's Counterclaim Count II for declaratory judgment (Lacroix Answer to Am. Compl., Countercl. attached thereto, ¶¶ 71-74; Anthony Answer to Am. Compl., Countercl. attached

thereto, ¶¶ 159-162), the Court determines that Lacroix and the Anthonys are entitled to declaratory judgment stating that Plaintiffs do not possess any easements over the Lacroix or Anthony properties. Finally, as to Defendant Anthonys' and Lacroix's Counterclaim Count III for injunctive relief (Lacroix Answer to Am. Compl., Countercl. attached thereto, ¶¶ 75-77; Anthony Answer to Am. Compl., Countercl. attached thereto, ¶¶ 162-165), the Court determines that Lacroix and the Anthonys are entitled to injunctive relief enjoining Plaintiffs from interfering with the Lacroix's and the Anthonys' quiet enjoyment of their respective properties.

As to the Defendants Stephenses' Counterclaim Count I (Stephens Answer to Am. Compl., Countercl. attached thereto, ¶¶ 155-56) to quiet title to easements over their respective property, the Court determines that the Stephenses are not entitled to a judgment quieting title to the easement held by the Plaintiffs to cross over the Stephenses' property. As to Defendants Stephenses' Counterclaim Count II for declaratory judgment (Stephens Answer to Am. Compl., Countercl. attached thereto, ¶¶ 157-60), the Court determines the Stephenses are not entitled to a declaratory judgment stating that Plaintiffs do not possess any easements over the Stephenses' properties. Finally, as to Defendants Stephenses' Counterclaim Count III for injunctive relief (Stephens Answer to Am. Compl., Countercl. attached thereto, ¶¶ 160-63), the Court determines that the Stephenses are not entitled to injunctive relief enjoining Plaintiffs from interfering with the Lacroix's and the Anthonys' quiet enjoyment of their respective properties.

IV

Conclusion

For the reasons stated above, this Court concludes that Judgment shall enter for the Plaintiffs as to Count I (Quiet Title), Judgment shall enter for the Plaintiffs as to Count II (Declaratory Judgment), and as to Count III Judgment shall enter for the Plaintiffs (Injunctive

Relief) of the Amended Complaint. Furthermore, it is hereby declared that the Plaintiffs are the true lawful and proper owners and users of the easement in and over the Stephens Property. The Plaintiffs have the right to use the easement in accordance with the grant made pursuant to § 9-30-1; and the Court concludes that the Plaintiffs are entitled to an express easement to cross over the Stephens Property to access Seaweed Beach and the sea in accordance with the grant made to the Plaintiffs by the Dareliuses in Book 186 at Page 174 of Narragansett's Land Evidence Records.

Judgment shall enter for the Defendants Anthonys and Lacroixes with respect to Count I (Quiet Title), Count II (Declaratory Judgment), and Count III (Injunctive Relief) of their respective Counterclaims.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Michael R. McElroy, et al. v. Edward Stephens, III, et al.**
CASE NO:	**WC-2014-0575**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**December 21, 2022**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**

ATTORNEYS:

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For Defendant:	**James A. Donnelly, Esq.**